INDIA'S CONSTITUTION

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DR. RAJENDRA PRASAD, PRESIDENT OF INDIA

INDIA'S
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Foreword

by

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President of India

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FOREWORD

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RAJENDRA PRASAD

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CONTENTS

	FOREWORD	3
I.	INTRODUCTORY ..	5
II.	SOME SIGNIFICANT ASPECTS	17
III.	CITIZENSHIP	24
IV.	FUNDAMENTAL RIGHTS ..	26
V.	DIRECTIVE PRINCIPLES ..	37
VI.	THE INDIAN UNION ..	40
VII.	THE EXECUTIVE ..	47
VIII.	PARLIAMENT ..	55
IX.	THE STATES	62
X.	THE THREE SAFEGUARDS ..	67
XI.	CONCLUSION	78
	APPENDICES	80
	BIBLIOGRAPHY	98

1. INTRODUCTORY

Evolution of the Constituent Assembly

In 1922, Mahatma Gandhi first conceived the idea of a constituent assembly elected by the people. He observed, "Swaraj will not be a free gift of the British Parliament, it will be a declaration of India's full self-expression. That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of the Union of South Africa." Nevertheless, it was not until 1935 that the idea was officially and seriously put forward by the Indian National Congress. "The National Congress," wrote Shri Jawaharlal Nehru in January 1938, "stands for independence and a democratic state. It has proposed that the constitution of a free India must be framed without outside interference, by a constituent assembly elected on the basis of adult franchise. That is the democratic way and there is no other way short of revolution which can bring the needed result. An assembly so elected will represent the people as a whole and will be far more interested in the economic and social problems of the masses than in the petty communal issues which affect small groups. Thus, it will solve without much difficulty the communal and other like problems."

Till World War II, the British Government resisted India's demand for a constituent assembly. But the war and the international situation created circumstances which opened the eyes even of the Churchill Government. The Cripps Plan sought to set up immediately upon the cessation of hostilities an elected body in order to frame a new constitution for the country. This plan, however, proved abortive. On March 15, 1946, Mr. Attlee, the

Labour Prime Minister, declared in the House of Commons, "Is it any wonder that today India claims, as a nation of 400 million people that has twice sent her sons to die for freedom, that she should herself have freedom to decide her own destiny? What form of government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision."

Born with Limitations

The outcome was the Constituent Assembly set u in 1946 according to the Cabinet Mission Plan. It wa not a sovereign body; "it was born with limitations" bot in respect of basic principles and procedure. Moreove it was subject to the final authority of the British Parlia ment.

Notwithstanding these adverse conditions, the Con gress agreed to join the Constituent Assembly. Th Muslim League, on the other hand, refused to do so despite the statement of December 6, 1946, which conceded prac tically everything the League wanted. It fell back upor its original stand, according to which the "Muslim Nation" would never participate in any single constitution-making machinery. It demanded two separate constitution-making bodies for the people of "Pakistan" and "Hindustan."

The deadlock persisted till the June 3, 1947 Plan brought about the partition of the country.

A Sovereign Constituent Assembly

The Indian Independence Act, 1947, discarded the Cabinet Mission Plan and established the sovereign character of the Constituent Assembly. On August 14, 1947, it re-assembled to assume power on behalf of the Government of India.

Shaping of the Constitution

In the first session of the sovereign Constituent

Assembly of India, its President, Dr. Rajendra Prasad, spoke of a classless society for India. It was to be a co-operative commonwealth, and the making of its constitution was the supreme task of the Assembly. The foundation of its constitutional structure was laid by the Objectives Resolution moved by Shri Jawaharlal Nehru. It said :

> Wherein all power and authority of the Sovereign Independence India, its constituent parts and organs of government, are derived from the people; and
>
> Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
>
> Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and other backward classes; and
>
> Wherein shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and
>
> This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The brick and mortar of the structure were provided by the reports of the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, the Committee on Chief Commissioner's Provinces, the Committee on Financial Provisions of the Union Constitution, and the Advisory Committee on Tribal Areas. But the final shape and form were given by the Drafting Committee with late Dr. Ambedkar as Chairman. The Draft Constitution, framed after eight months labour, was considered clause by clause by the

Constituent Assembly and was amended in the light of criticism.

On November 26, 1949, the Constituent Assembly in the name of the people of India adopted and enacted the Constitution—The Charter of India's Freedom. The Constitution as it finally emerged after two years, eleven months and eighteen days comprised 395 articles and eight Schedules.

AMENDMENTS TO THE CONSTITUTION

Since then the Constitution of India has been amended seven times.

The First Amendment

As the validity of the zamindari abolition laws, which appeared in the Government's programme of social legislation, was disputed, the Constitution (First Amendment) Act, 1951, sought to place these laws above challenge in the courts. It has added two more articles and a Schedule for this purpose. It has also amended article 15 so as to ensure that any special provision made for the advancement of the weaker sections of the people and the Scheduled Castes and the Scheduled Tribes would not be open to challenge on the ground of being discriminatory.

By an amendment of clause (2) of article 19, it has permitted reasonable restrictions to be imposed by law on the exercise of the right of freedom of speech and expression in the interest of friendly relations with foreign States or public order or on the ground of incitement to an offence. These restrictions are, however, subject to judicial review on grounds of reasonableness. An amendment of clause (6) of article 19 has, however removed from the scope of judicial review, or grounds of reasonableness, restrictions imposed on the right of citizens to carry on any trade, business, industry or service where such restrictions have been imposed with a view to enabling the State to undertake any scheme of nationalisation.

The Second Amendment

The Constitution (Second Amendment) Act, 1952,

Aims of the Constitution

To secure to all its citizens:
JUSTICE, Social, Economic, and Political;
LIBERTY of Thought, Expression, Belief, Faith and Worship;
EQUALITY of Status and of Opportunity.
And to promote among them all:
FRATERNITY, assuring the Dignity of the Individual and the Unity of the Nation.

Fundamental Rights

(1) Equality before Law
(2) Equality of Opportunity
(3) Abolition of Untouchability
(4) Right to Freedom, including Freedom of Speech, Assembly, Profession, etc.
(5) Protection of Life and Personal Liberty
(6) Right against exploitation
(7) Freedom to profess, practise and propagate any religion
(8) Cultural and Educational Rights
(9) Right to Property
(10) Right to Constitutional Remedies

brought article 81(1)(b) relating to representation in the House of the People in line with article 170(2) which relates to representation in the State Assemblies. Article 81(1)(b), as it originally stood, provided that the States were to be divided, grouped or formed into territorial constituencies and the number of members to be allotted to each constituency was to be so determined as to ensure that there would be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. The amended article removed the upper limit of 500 members prescribed in article 81(1)(a). This was done to avoid difficulty in effecting readjustments in the representation of territorial constituencies in the House of the People as a result of the 1951 census.

The Third Amendment

Under article 369, Parliament had power to legislate in respect of certain essential commodities up to January 25, 1955. As it was considered essential that the Centre's control over some of these commodities should continue, the Constitution (Third Amendment) Act, 1954, amplified the scope of Entry 33 of List III in the Seventh Schedule. It included four classes of commodities, namely, foodstuffs, cattle fodder, raw cotton and raw jute. Imported goods of the type produced by the centralised industries were also placed in that entry. This will enable the Centre to exercise full control over the development of such industries.

The Fourth Amendment

The First Amendment dealt with zamindari abolition laws, which introduced important reforms in the land system of the country. Subsequent judicial decisions interpreting articles 14, 19 and 31, however, raised difficulties for the Union as well as the State Governments in putting through other social welfare legislation on the desired lines. It thus became necessary to restate more precisely the States' power of compulsory acquisition and requisitioning of private property and distinguish it from

cases where the operation of regulatory or prohibitory laws of the State resulted in the deprivation of property. It was also essential to save other social welfare legislation affecting property rights from the purview of articles 14, 19 and 31. Accordingly, the Constitution (Fourth Amendment) Act, 1955, has further amended articles 31 and 31A so as to make provisions for:

(a) placing the question whether the compensation provided under the law is adequate or not outside judicial review;

(b) clarifying that the deprivation of property unaccompanied by any transfer of the ownership or right to possession of such property will not amount to compulsory acquisition or requisitioning of the property; and

(c) saving laws which provide for any one of the following matters from challenge in the courts on the ground of contravening articles 14, 19 and 31 of the Constitution namely :—

(1) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property;

(2) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations;

(3) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof.

(4) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or obtaining, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or license.

As a corollary to the amendment of article 31A, the Ninth Schedule was also amended by the inclusion in it of seven more laws. At the same time, opportunity was taken to amend article 305 so as to put beyond doubt the authority of Parliament or of a State Legislature to make laws introducing State monopoly in any kind of trade or commerce.

The Fifth Amendment

Under the proviso to article 3 of the Constitution, it was provided that any Bill for the purpose of forming a new State or altering the area, boundaries or name of any State could not be introduced in Parliament unless the views of the Legislatures of the States concerned had been ascertained by the President. The Constitution (Fifth Amndment) Act, 1955, has amended the said proviso so as to authorise the President to prescribe a time-limit for the State Legislatures to communicate their views in the matter and to enable the Bill to be introduced after the expiry of the time-limit so prescribed.

The Sixth Amendment

The provisions in the Constitution relating to sales tax gave rise to a great deal of legal controversy and practical difficulty. The Taxation Enquiry Commission examined this problem and made certain recommendations for the amendment of those provisions. Accordingly, the Constitution (Sixth Amendment) Act, 1956, was enacted to give effect to those recommendations. It added a new entry 92A in the Union List placing taxes on inter-State sales and purchases of goods other than newspapers within the exclusive legislative power of the Union and made consequential amendments in entry 54 of the State List and in articles 269 and 286 of the Constitution. It also replaced clause (3) of article 286 by a new clause so as to enable Parliament to declare by law the goods which were of special importance in inter-State trade or commerce and to specify the restrictions and conditions to which any law of a State would be subject in regard to the system of levy, rates and other incidents of the tax

on the sale or purchase of such goods.

The Seventh Amendment

The Constitution (Seventh Amendment) Act, 1956, was enacted to implement the scheme of States reorganisation as envisaged by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956, and to make certain other amendments in the Constitution.

The reorganisation scheme involved not only the establishment of new States and alterations in the area and boundaries of the existing States but also the abolition of the three categories of States (Part A, Part B and Part C States) and the classification of certain areas as Union territories. The Seventh Amendment has therefore amended suitably article 1 and revised completely the First Schedule.

The territorial changes and the formation of new States and Union teritories necessitated a complete revision of the Fourth Schedule to provide for the reallocation of seats in the Council of States among the States and the Union territories. Moreover, the original allocation of seats in the Council of States was based on the 1941 census. As there was a fresh census in 1951, it necessitated the re-allocation of seats and accordingly the Seventh Amendment has revised the Fourth Schedule completely.

Articles 81 and 82, which provided for the composition of the House of the People, have also been revised and simplified. The previous upper and lower limits of representation have been abolished. It is now provided that each State shall be allotted seats in the House of the People in such a way that the ratio between the number of such seats and the population of the State is, so far as practicable, the same for all the States. It has been also laid down that the ratio between the population of each constituency and the number of seats allotted to it in a State should, as far as possible, be uniform throughout the State. A maximum of twenty seats can be allotted

by Parliament for the representatives of the Union territories.

The revision of the proviso to article 131 was consequential on the disappearance of Part B States.

Since it may be considered desirable under certain circumstances to appoint a Governor for two or more States, a proviso has been added to article 153 to remove any technical bar to such an appointment.

As the Reorganisation scheme envisages bicameral legislatures for some of the new States, article 168 has been amended to make provision for it.

The Seventh Amendment has substituted a new article 170 to lay down the composition of the Legislative Assemblies of the States so as to bring it into line with the revised articles 81 an 82 which deal with the composition of the House of the People.

The former article 171 fixed the maximum strength of the Legislative Council of a State at one-fourth of the strength of the Legislative Assembly of that State. Although in the larger States like Uttar Pradesh and Bihar this maximum strength was adequate, in the case of smaller States it was not. Article 171 has accordingly been amended to increase the maximum strength of a Legislative Council to one-third of the strength of the Legislative Assembly.

Under the proviso to the former article 216 it was left to the President to fix the maximum number of Judges for each High Court by a separate order. The appointment of additional and acting Judges for which a provision has now been made in article 224 would have involved frequent modifications in the order. The proviso has consequently been dropped.

The Indian Constitution previously debarred a High Court Judge from practising in any court after his retirement from the Bench. The Seventh Amendment has modified article 220 so as to relax this ban and permit a retired Judge to practise in the Supreme Court and in a High Court other than the one in which he was a permanent Judge.

Consequent on the reorganisation of States and the creation of Union territories, new articles 230 and 231 have been substituted for former articles 230, 231 and 232. These provide for the extension of the jurisdiction of a High Court to a Union territory or the exclusion of its jurisdiction from such territory. They also provide for the establishment of a common High Court for two or more States or for two or more States and a Union territory, whenever necessary.

The Seventh Amendment has also amended Part VIII of the Constitution to provide for the administration of Union territories.

Clause (1) of article 258 confers power on the President to entrust Union functions to a State Government or its officers with the consent of the State Government. Formerly, however, there was no corresponding provision enabling the Governor of a State to entrust State functions to the Central Government or its officers with the consent of the Central Government. The lacuna proved to be a hindrance in the execution of certain development projects in the States. The Seventh Amendment has incorporated a new article 258A to obviate this difficulty.

A new article 290A has also been inserted to continue the existing arrangement with regard to the contribution to the Devaswom Fund even after the formation of the new State of Kerala and to apportion the contribution between the States of Kerala and Madras.

The Seventh Amendment has amplified the scope of article 298 to make it clear that the Union Government and the State Governments are competent to carry on any trade or business and to acquire, hold and dispose of property and to make contracts for any purpose. It has, however, been provided that the executive power of the Union will, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State, and the executive power of each State will, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

The Seventh Amendment has also inserted two new articles, namely, 350A and 350B which are designed to implement the recommendations of the States Reorganisation Commission with regard to safeguards for linguistic minorities.

Article 371 has been replaced by a new article which makes provision for enabling the President to constitute regional committees of the Legislative Assemblies of the new States of Andhra Pradesh and Punjab and to secure their proper functioning. It also enables the President to make order providing for any special responsibility of the Governor for the establishment of separate development boards for certain areas in the new State of Bombay, the allocation of funds for developmental expenditure over those areas and certain other matters.

The Seventh Amendment has also inserted a new article 372A. It also empowers the President to adapt the laws in force in the country immediately before the commencement of that Amendment Act in order to bring them into accord with the provisions of the Constitution as amended. A special provision has also been included regarding the duration of the Andhra Pradesh Legislative Assembly. At the same time, it has made certain changes in the provisions relating to the Judges of the Supreme Court and of the High Courts in the Second Schedule and in the entries in the lists in the Seventh Schedule pertaining to the acquisition and requisitioning of property, ancient and historical monuments and records, and archaeological sites and remains.

Besides the above changes, a large number of consequential and minor amendments and repeals have also been made by the Seventh Amendment.

II. SOME SIGNIFICANT ASPECTS

A COMPREHENSIVE DOCUMENT

The Constitution of India is a comprehensive document and is perhaps the lengthiest written Constitution in the world. Unlike other Constitutions, it does not merely lay down fundamental principles of governance; nor does it deal with the federal government alone. It makes detailed provisions for the following :

(1) citizenship, (2) fundamental rights, (3) directive principles of State policy, (4) the structure of the government, (5) Parliament and State Legislatures, (6) the Union judiciary and the High Courts, (7) the functions of and relationship between the various organs, (8) the services, (9) the official language and (10) various other matters of basic importance.

The framers of the Indian Constitution have made an attempt to add necessary provisions to deal with the initial difficulties of the new State. They have tried to provide for all possible contingencies reducing the scope of judicial interpretation to a great extent. The size of the country and its peculiar problems are also responsible for the bulk of the Constitution. One entire part of the Constitution, for instance, relates to the welfare of the Scheduled Castes and Tribes and other Backward Classes. An elaborate bill of rights and a schedule of directive principles of State policy also find a place in the Constitution. Furthermore, special provisions like official language, public services and judiciary, which normally do not form part of other constitutions, have been incorporated in the Indian Constitution. This has been done to avoid controversies and to ensure the smooth working of the Constitution.

Sources

The framers of the Constitution have drawn widely upon the mature experience of democratic countries. They have tried to benefit from their example and incorporated only such features from their constitutions as would suit Indian conditions. In making certain fundamental departures from the prevalent theories and practices, they have adopted provisions which, besides being original, avoid rigidity and legalism in coping with emergencies in peace and war.

A large number of the provisions of the Indian Constitution owe their origin to the Government of India Act, 1935. The Chapter on Fundamental Rights derives its inspiration from the American Constitution and that dealing with the Directive Principles of State Policy from the Constitution of Eire. The structure of the Union Government is shaped after the models of the Canadian Constitution and the Government of India Act, 1935. The Concurrent List of subjects, although greatly expanded, is drawn up on the models of the Australian Constitution and the Government of India Act, 1935. The principle of Cabinet Government, on the other hand, is borrowed from the British Constitution.

The Indian Constitution also provides that the privileges of the members of the Indian Legislature shall, until they are defined by legislation, be those of the members of the House of Commons in the United Kingdom. It further empowers the Supreme Court and the High Courts to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari*.

The framers have, however, given the Indian Constitution a national character inasmuch as the *panchayats*, the most valuable of surviving democratic institutions of ancient India, have found a place in the country's constitutional structure.

Government by the People

The Constitution is essentially democratic and

republican in character. It declares India to be a sovereign democratic republic. In other words, India has a system of Government in which every citizen has direct access to the sources of authority. The right to political power thus means not only the right to vote or choose representatives but also the right to hold office and be chosen for it. For the first time in the history of modern India, the Constitution confers that right on all adult persons, that is, people who have attained the age of twenty-one, and removes all discrimination based on birth, weath, colour, race or sex. Thus, for instance, by a single stroke of pen, the Indian Constitution transforms the status of the Indian ryots who form seventy per cent of the population. By parliamentary government and universal adult franchise, the Government becomes accountable to the people and to their representatives.

Secular State

In spite of the existence of various communities in India, the Constitution is opposed to communal policy and stands for a secular State of India. A single common citizenship is assured to all irrespective of religion, caste, colour, creed or sex. Every citizen of India is free to practise the religion of his or her choice. The Government scrupulously refrains from discrimination on religious grounds or patronising or propagating any particular faith. The ideal is based on the theory that a secular State deals only with the relations between man and man and not between man and God. The State regulates the individual's behaviour only in relation to other human beings.

Written Constitution

Being a written document, the Indian Constitution provides for a limited Government which means that the Union and State legislatures draw their powers form the Constitution. The Union legislature is not sovereign like the British Parliament. The Indian Constitution

empowers the judiciary to declare a law of the Union or any State legislature unconstitutional if it contravenes fundamental rights or other provisions of the Constitution. But it does not go to the extent of providing judicial supremacy as in the United States. It seeks a compromise between judicial supremacy of the American Constitution and the sovereignty of Parliament in the British Constitution.

Federal Structure

The Indian Constitution is federal in form with a bias towards unitary. It has effected a compromise between the various theories of federalism and is marked by the usual characteristics of a federal system, namely, the supremacy of the Constitution, the existence of a Supreme Court and the distribution of powers. It has a dual polity with clearly defined spheres of authority for the Union and its constituent units—the States. There is an independent judiciary to define and interpret the Constitution and resolve disputes arising between the Centre and the States. But unlike America it is not a "federal" federation, with a bias towards autonomy and integrity of the units. The Indian Constitution vests residuary authority in the Centre; all matters not enumerated in the Concurrent or State Lists are deemed to be included in the Union List. It also arms the Centre with adequate powers to direct all important activities according to a uniformly executed plan. The unity in administration is sought to be achieved through a single judiciary, unity in basic laws, common all-India services and a common language.

The most important and distinctive feature of the Indian federal system is that the Constitution enables the Centre to supersede the authority of the States in an emergency. It also empowers the Union Parliament to legislate on grounds of national interest with respect to matters in the State List.

Its Flexibility

A good constitution must be elastic and should be capable of change in accordance with circumstances in order to meet eventualities without having to undergo the formal process of amendment. The Indian Constitution has all these qualities. The Constituent Assembly has refrained from putting a seal of finality and infallibility upon the Constitution. It has eschewed the difficult and complicated process of convention and referendum. The complexities of the American and Australian constitutions have also been avoided. Instead it has adopted a simple amending process.

The Indian Constitution divides its provisions roughly into two main groups. In one it includes articles relating to the (1) election of the President, (2) extent of the executive power of the Union and the States, (3) Union and the State judiciary, (4) legislative relations between the Union and the States, (5) Union, State and Concurrent Legislative Lists, and (6) representation of the States in Parliament. Most of the remaining provisions belong to the second category. In relation to the latter, the Constitution stands amended if a Bill to that effect is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. As regards the former, after a Bill has been passed by each House of Parliament, in the above manner, the amendments sought to be made by the Bill must be ratified by the Legislatures of not less than one-half of the States. There are in addition a few provisions which can be amended by Parliament in the ordinary way.

Elasticity is further introduced by enabling the federal structure to be converted into a unitary one in an emergency. The Central Government can then assume control of all affairs of the nation and Parliament can exercise legislative powers which otherwise are exclusively vested in the States. Even in peace time Parliament can legislate for a specified period on any of the subjects in the State list provided that it is declared to be of national im-

portance by a resolution passed by a two-thirds majority in the Council of States. The adoption of a long list of the concurrent subjects not only makes India's Constitution flexible but is also corrective of unecessary legalism, the bane of federalism.

A positive proof of the flexibility of the Indian Constitution lies in the fact that within seven years of its adoption it has been amended seven times. The Second, Third, Sixth and Seventh Amendments also secured the requisite ratification by the State Legislatures.

The State Language

The provision regarding the State language is another important feature of the Indian Constitution. Besides being a medium of national intercourse, a single State language is absolutely essential for administrative convenience in a vast and multilingual country like India. The Constitution prescribes Hindi in Devanagari script with the Indian numerals in international form as the official language of the Union. For a period of fifteen years, however, the English language will continue to be used for all official purposes of the Union. At the same time provisions have been made to introduce and extend Hindi for official use even earlier than the prescribed period. The Legislature of a State, however, can adopt one or more of the languages in use in the State as a regional language. Fourteen of these languages including Hindi have been enumerated in the Eighth Schedule. Legislatures can also use Hindi as the official language.

Special Provisions for Scheduled and Tribal Areas

Another important feature of the Indian Constitution is the special provisions for the Scheduled and Tribal Areas. These are meant to ensure the welfare and social autonomy of the Scheduled Tribes. For the first ten years, some seats in the Legislatures will be reserved for them. Grants-in-aid will be made to the States from the Consolidated Fund of India to meet the cost involved in the schemes

of development for the purpose of promoting the welfare of the Scheduled Tribes or raising the level of administration of the Scheduled Areas in a State to that of the administration of the rest of the areas of that State. Special provisions have also been made for the administration of Scheduled and Tribal Areas. In Assam, for instance, District Councils and Regional Councils will be set up for the Tribal Areas. These will give the tribal people a substantial share in administration. For the other States, Advisory Councils will be created in order to associate the tribal people with administration. Moreover, the Indian Constitution stipulates the appointment of a minister to be in charge of the welfare of the tribes in the States of Bihar, Madhya Pradesh and Orissa—the three States where the number of tribes is very large. A special officer wil periodically report on the working of these safguards. Finally, a special commission will report on the administration of Scheduled Areas and the welfare of Scheduled Tribes.

III. CITIZENSHIP

The Indian Constitution provides for common citizenship. It rejects the double citizenship characteristic of a federal structure.

The people deemed to be Indian citizens at the commencement of the Indian Constitution include :

(1) those domiciled in India;

(2) persons who migrated to India from Pakistan; and

(3) Indians overseas

But these provisions are only tentative. It is left to Parliament to make comprehensive laws on the subject.

The first category of persons who are declared citizens by the Indian Constitution comprises those who have their domicile in India and

(a) who were born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who have been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

The Indian Constitution has thus adopted in addition to domicile a three-fold basis for citizenship, namely, birth, descent and residence.

The second category consists of those who have migrated to India from Pakistan or who having migrated to Pakistan have returned to India under permanent permits granted to them by the Indian authorities. A displaced person from Pakistan will be deemed to be a citizen of India on the commencement of the Constitution, if

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***A Citizenship Act has now been enacted by Parliament (Appendix V).**

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935; and

(b) (i) (in the case where such person had migrated before July 19, 1948), he has been ordinarily resident in the territory of India since the date of his migration; or

(ii) (in the case where such person had migrated on or after July 19, 1948), he has been registered as a citizen of India on an application made by him in that behalf before a specified authority.

With regard to item (b) (ii) above, there is a reservation that no such person shall be registered unless he had resided in the territory of India for at least six months immediately preceding the date of his application. These provisions are, in fact, in conformity with the policy of the Government to accept practically all displaced persons who came to India from Pakistan before July 19, 1948, but thereafter to accept only such people as were registered as citizens of India. The Indian Constitution denies citizenship to those who migrated to Pakistan after March 1, 1947, but exempts those who have returned to India from Pakistan under permits seeking permanent settlement. The exemption is intended to help those Muslims or their families who left for Pakistan during the disturbances without any intention of residing there permanently.

Finally, any person of Indian origin ordinarily residing outside India, that is to say, every person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935, and who is ordinarily residing outside India can acquire citizenship if he registers himself as a citizen of India through India's diplomatic or consular representative abroad.

These rights are subject to the provision that if a person voluntarily acquires the citizenship of any foreign State, he shall not be a citizen of India.

IV. FUNDAMENTAL RIGHTS

"Rights are the groundwork of the State. They are the quality which gives the exercise of its power a moral character. And they are natural rights in the sense that they are essential for the good life". Their inclusion in the constitution of a country makes them inviolable, commanding the respect of the people and the government alike. Being fundamental to every citizen, they are made justiciable, but some rights which cannot be enforced in the courts are more imperative and less violable because of their place in the constitution. They have a great educative value and provide training in citizenship.

The theory of fundamental rights implies limited government. It aims at preventing the government and the legislature from becoming totalitarian, and in doing so it affords the individual an opportunity for self-development. But these rights are not absolute; they are subject to limitations imposed by the State in order to secure rights for all individuals or to promote the greater interests of the community or the State, or to serve the ends of a planned society. Consequently, the provisions regarding individual rights in the Indian Constitution are subject to regulation by the State within certain prescribed limits.

The Indian Constitution offers all citizens individually and collectively the best fruits of democracy and those basic freedoms and conditions of life which alone make life significant and productive. The rights enumerated in Part III of the Constitution cover a wide range and are declared fundamental and justiciable. Unless otherwise provided in the Constitution, all laws which are inconsistent with them, or take away or abridge these rights, are null and void.

Some of the fundamental rights, such as, prohibition

of discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, rights regarding freedom of speech and expression, freedom of assembly, freedom of association, etc., and cultural and educational rights are only for the Indian citizens while the rest of the provisions relating to fundamental rights are applicable also to aliens and other persons residing within the territory of India. Again, there are some rights which impose limitations upon State action, such as, equality before law, the prohibition of discrimination on certain grounds, equality of opportunity for services, the abolition of titles, right to freedom of speech and expression, the protection in respect of conviction for offences, protection of life and personal liberty, protection against arrest or detention in certain cases and right to property. There are other rights which impose limitations upon the freedom of action of private individuals like the prohibition of discrimination with regard to access to shops or hotels or with regard to the use of wells, roads, etc., the abolition of untouchability and the prohibition of traffic in human beings and forced labour. The distinction between the two categories of rights is that in the former case the Indian Constitution itself has provided remedy for a breach of these rights, but in case of the latter the remedy is punishment of the offence under the ordinary laws.

The fundamental rights are classified as :

(1) Right to Equality,
(2) Right to Freedom,
(3) Right against Exploitation,
(4) Right to Freedom of Religion,
(5) Cultural and Educational Rights,
(6) Right to Property, and
(7) Right to Constitutional Remedies.

Right to Equality

The Indian Constitution postulates civic and social equality as the bedrock of Indian polity. Discrimination

against any citizen on grounds of religion, race, caste, sex or place of birth is prohibited. In public employment it ensures equality of opportunity for all citizens. This is, however, subject to the right given to Parliament to prescribe in certain cases residential qualifications and to the right of a State to reserve posts for backward classes, who, in the opinion of the State, are not adequately represented in the services. The definition of "backward classes" has been left to the decision of the State which makes the reservation. An exception has also been made in the case of laws which provide for reservation of offices in a religious or denominational institution to members professing a particular religion or belonging to a particular denomination.

Another important step which India's Constitution has taken towards the establishment of social equality in India is the abolition of titles which created artificial differences among the people. Only the conferment of military or academic distinctions now continues. Bharat Ratna, Padma Vibhushan, Padma Bhushan, Padma Shri and other State awards are not regarded as titles in terms of article 18(1) of the Constitution.

Abolition of Untouchability

The Indian Constitution has put legal stamp on the great social revolution brought about by Mahatma Gandhi. It lifts about fifty million untouchables of India from their age old low social status. It lays down that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. This single clause outlawing untouchability is more precious than all the rights of equality granted under the Constitution. It puts an end to the most degrading of social inequalities that have vitiated Hindu society. Such social customs and disabilities as enforced segregation of "untouchables" at wells and in streets, schools and places of worship are declared illegal. In fact, the ban covers all forms of untouchability specified

or unspecified.

It is provided in article 15 that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It is further provided in that article that "no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to :

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, bathing, ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

These provisions will not, however, prevent the State from making any special provision for women and children. It has also been provided by an amendment made in that article by the Constitution (First Amendment) Act, 1951, that these provisions shall not prevent the State from making any special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

With the statutory equality of status accorded to "untouchables", a new chapter of social democracy opens in India. This right to equality or equal protection of law against segregation on grounds of colour is still to be recognized even in some advanced countries. Under the Indian Constitution, however, segregation on grounds of colour or caste in public places, carriages and educational institutions constitutes an offence and a direct breach of the right to equality.

Right to Freedom

Consistent with its democratic aims, India's Constitution seeks to guarantee basic rights regarding freedom to all citizens. Every citizen enjoys freedom of speech and expression and the right to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and

settle in any part of it, to acquire, hold and dispose of property and to practise any profession or to carry on any occupation, trade or business.

Absolute or unrestricted individual rights do not, and cannot, exist in any modern State. The Indian Constitution accordingly acknowledges that there cannot be any such thing as absolute or uncontrolled liberty and makes provisions in clauses (2) to (6) of article 19 authorising the State to restrict the exercise of the freedom guaranteed under that article within the limits specified in those clauses. Thus clause (2) of article 19, as subsequently amended by the Constitution (First Amendment) Act, 1951, enables the Legislature to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of (i) the security of the State, (ii) friendly relations with foreign States, (iii) public order or (iv) decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly power is given to the State for restricting the other rights specified in clause (1) of article 19 on the conditions laid down in clauses (3) to (6) of that article.

It is sometimes said that the saving clauses in the Indian Constitution detract from the rights ensured by article 19. This is an erroneous conception. As already observed, no rights are ever absolute. They are always subject to limitations imposed by the State to secure or promote the larger interests of the community. Liberty has to be limited in order to be effectively possessed, it is said. Even in the American Constitution some restrictions on rights are recognised by the Supreme Court as vital for the State.

Personal liberty and the rule of law also find a place in the Indian Constitution. No person can be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence. Nor can he be subjected to a penalty greater than what might have been inflicted under the law in force at the time of the commission of the offence. The other legal reliefs available to the individual are that no person will

be prosecuted and punished for the same offence twice and that no person accused of any offence will be compelled to be a witness against himself. The principle of the rule of law is recognised by other provisions also. Thus no person can be deprived of his life or personal liberty except "according to procedure established by law"; nor shall he be denied equality before the law or the equal protection of the laws of the country.

Detention without trial has been an anathema to the people of India. The Indian Constitution, therefore, includes measures against arbitrary arrest and indefinite detention. It lays down that "no person who is arrested shall be detained in custody without being informed, as soon may be, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice". It defines the procedure to be adopted in the event of detention. An exception has been made in the case of persons who are (i) for the time being enemy aliens or (ii) under prevention detention. In the case of preventive detention it prohibits the detention of a person beyond three months unless an Advisory Board consisting of judges or retired judges of a High Court or persons qualified to be appointed as judges of a High Court, has reported before that period that there is sufficient cause for such detention or that such person is detained in accordance with the provisions of a law made by Parliament. It further provides that no person shall be detained beyond the maximum period prescribed by any law made by Parliament. At the same time, it enjoins that the authority making the order of detention shall communicate to the person detained the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

Right Against Exploitation

India's Constitution also prohibits traffic in human beings, enforced labour and employment of children below fourteen years in factories, mines and other hazardous employment.

Right to Freedom of Religion

True to the tradition of religious toleration and the catholicity of the Objective Resolution, India's Constitution guarantees religious freedom to all. Subject only to public order, morality, health and other essential provisions, all persons are entitled to freedom of conscience and the right to profess, practise and propagate religion freely. The Sikhs have thus the right to wear and carry kirpans. The right has been further guaranteed by the autonomy given to every religious denomination to manage its religious affairs and to own, acquire and administer property for religious or charitable purposes. Certain restrictions have, however, been imposed in order that religion may not be used as a political weapon, or as a bulwark of social reaction. Accordingly, no one will be compelled to pay taxes for the promotion or maintenance of any particular religion or religious denomination. Nor is religious instruction or religious worship compulsory at institutions which are recognised by the State or receive aid from the State funds. The Indian Constitution taboos religious instruction as such in all educational institutions wholly maintained by the State.

Cultural and Educational Rights

The Indian Constitution, as one member of the Constituent Assembly put it, "opens a new era of the right of the minorities". It safeguards the freedom of every minority to practise its own religion, and to conserve its own culture, language and script. The term "minority" is used in this connection in a wide sense to include even cultural minorities which exist in a particular locality. The main idea, as late Dr. Ambedkar explained, was to see that "if there was a cultural minority which wanted to preserve its own language and culture, the State would not by law impose upon it any other culture which might be local or otherwise". All minorities, religious or linguistic, have been given the right to establish and administer educational institutions and the State is prohibited from dis-

criminating against any such institution in granting aid. Further, no citizen can be denied admission to educational institutions maintained or aided by the State on grounds only of religion, race, caste or language. Thus, in addition to their own, the minorities in India have all the educational facilities available to the majority.

The right to education in mother-tongue at the primary school stage has been given a constitutional recognition. A new provision has been included by the Constitution (Seventh Amendment) Act, 1956, under which the President can issue such directions to any State as he considers necessary for securing such facilities. The Seventh Amendment also provides for the appointment of a special officer who will report to the President on the working of the safeguards provided for linguistic minorities under the Constitution. This report will be laid before each house of Parliament and will also be sent to the Government of the States concerned.

Right to Property

The Indian Constitution as amended prohibits the expropriation of property save by authority of law. It stipulates that a property shall be compulsorily acquired or requisitioned only for a public purpose and that it shall be done only under the authority of a law which provides for compensation and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given. An additional safeguard has been provided which prescribes that no State legislation for compulsory acquisition or requisitioning can be enforced unless it has received the President's assent.

To avoid difficulties created by certain judicial decisions, the Indian Constitution, as amended by the Fourth Amendment, has left the question of the amount of compensation to be determined by the Legislature, and it is not open to the court to go into the question on the ground that the compensation provided by the law is not adequate. It

also restates more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguishes it from cases where the operation of regulatory or prohibitory laws results in the deprivation of property.

Exceptins to the requirement of compensation embodied in the Indian Constitution have been made in the case of any law enacted for the purpose of imposing or levying a tax or penalty or for the promotion of public health or the prevention of danger to life or property and also in the case of certain laws affecting evacuee property.

India's Constitution, as originally enacted, had also exempted from the jurisdiction of the courts certain pending legislative measures in the States regarding the abolition of the zamindari system. This provision, however, was found inadequate inasmuch as some of these provisions were sucessfully challenged in courts. The Consituation (First Amendment) Act, 1951, accordingly inserted a new Article 31A in the Constitution and gave it retrospective effect as from January 26, 1950. Under this article, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be void on account of the provisions relating to Fundamental Rights in the Constitution. To save other social welfare legislations which affect proprietory rights from the purview of articles 14, 19 and 31, the Fourth Amendment of the Constitution extended the scope of Article 31A so as to cover also other categories of welfare legislations to which a reference has already been made.*

Without prejudice to the generality of the provisions contained in article 31A, the First Amendment provided, by the insertion of another new article 31B, that certain Acts relating to the abolition of zamindaris—a list of which is contained in the Ninth Schedule—would not be deemed to be void, or ever to have become void, on account of the provisions of the Constitution relating to Fundamental

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*p. 8.

Rights. The Fourth Amendment has added seven new entries in the Ninth Schedule, thus bringing some more social welfare legislations also within the purview of article 31B. In this way, the validity of all laws enumerated in the Ninth Schedule is ensured with retrospective effect by the Constitution.

The First Amendment excluded State monopolies from the purview of sub-clause (g) of clause (1) of article 19, But a certain decision of the Supreme Court raised the question whether an Act providing for State monopoly in any particular trade or commerce conflicts with the freedom of trade and commerce guaranteed by article 301. The Fourth Amendment of the Constitution has accordingly amended article 305 to avoid such conflict.

Right to Constitutional Remarks

The provision on constitutional remedies, as described by the late Dr. Ambedkar, is the "heart and soul of the whole Constitution." Rights have no meaning unless they are enforced and safeguarded by constitutional methods. Every citizen has the right to move the Supreme Court for the enforcement of fundamental rights. To this end, the Supreme Court is given general powers to safeguard these rights as well as the power to propose particular remedies, such as, the issue of writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari.*

The inclusion of these writs in the Indian Constitution guarantees the freedom of the individual. Formerly the power to issue such writs could be taken away at will by the legislature. When the Constitution came into force it became part of the fundamental law and now it cannot be changed without amending the Constitution. Parliament, however, is authorised to confer this power on any court to exercise it within the local limits of its jurisdiction. The right to constitutional remedies cannot be suspended save in a declared emergency. Even then the suspension of rights need not necessarily extend to the whole of India. Nor is the power of suspension un-

fettered. Thus although the Executive Head of the Union has been given power to suspend the rights the order will have to be laid before Parliament which may express its disapproval of the same. Moreover, the rights are restored as soon as the emergency is over.

Authority of Parliament

Parliament is authorised to modify the fundamental rights in their application to the Armed Forces. A public servant can also be indemnified for any act done in his official capacity under martial law. Parliament can further validate any sentence passed, punishment inflicted or forfeiture ordered during the operation of martial law.

Notwithstanding the limitations regarding the distribution of legislative powers between the Centre and the States, Parliament has been vested with exclusive power to make laws with respect to certain matters relating to these rights and also for providing punishment for offences committed in respect of some of these rights. Laws and punishments in force at present with regard to those matters will continue to be so until altered or replaced by Parliament. This provision, the late Dr. Ambedkar explained, is necessary to make the fundamental rights and punishment for their breach uniform throughout India.

V. DIRECTIVE PRINCIPLES

The chapter dealing with the Directive Principles of State Policy is a unique feature of India's Constitution. The only parallel is to be found in the Constitution of the Irish Republic. The Directive Principles are in the nature of directions to the Legislature and the Executive that they should exercise their authority in such a manner as to ensure due respect for, and observance of, these principles. Although these directives are not justiciable, the courts cannot altogether avoid taking cognisance of them. They are the imperative basis of State Policy and the Constitution directs the State to apply these principles in making laws. Their importance has increased in the present context, for India has now accepted a socialistic pattern of society as her objective. On March 14, 1955, the Prime Minister of India, while askng the Lok Sabha to refer the Constitution (Fourth Amendment) Bill to a select committee, declared that the Fundamental Rights must subserve the Directive Principles of State Policy.

The expression "State," however, has a dual meaning. As a collective entity, it represents the Government and Parliament of India and the government and the legislature of each State. In a distributive sense it implies even the village panchayats, district boards and other local bodies.

To make democracy real and effective, one of the directive principles enjoins that it must be both economic and political. This means "one man, one value," although the Indian Constitution does not prescribe any specific method to achieve this goal. What it does direct however, is that every government, whether at the Centre or in the States, should strive to bring about a democratic economic structure. As the late Dr. Ambedkar put it, "it enjoins that

however adverse the circumstances may be, the Government should always endeavour to achieve this principle."

Among the economic rights and principles of social security which the Indian Constitution specifically requires the State to ensure for its people are:

(1) adequate means of livelihood,
(2) fair distribution of wealth,
(3) equal pay for equal work,
(4) protection of child and adult labour,
(5) employment,
(6) free and compulsory education for children up to the age of fourteen,
(7) public assistance in the event of unemployment, old age, sickness, disability and other cases of undeserved want,
(8) living wage,
(9) conditions of work assuring a decent standard of life, full enjoyment of leisure, and social and cultural opportunities, and
(10) the raising of the level of nutrition and the improvement of health.

Special emphasis is laid on the promotion of educational and economic interests of the Scheduled Castes and Scheduled Tribes and other weaker sections of the people.

The directives also incorporate other important subjects which progressive opinion in India has, for a long time, been asking for. Some of these are :

(1) organisation of the village panchayats,
(2) uniform civil code for all citizens,
(3) prohibition,
(4) organisation of agriculture and animal husbandry,
(5) prohibition of slaughter of milch and draught cattle,
(6) protection of monuments and other places and objects of national importance, and
(7) separation of the judiciary from the executive.

Consistent with the high moral traditions of the country and its desire for world peace, it is further affirmed

that the foreign policy of India should promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised people with one another and encourage settlement of international disputes by arbitration.

VI. THE INDIAN UNION

India, also to be known as Bharat, has been described in the Indian Constitution as a Union of States. The name implies the indestructible nature of its unity. No unit can thus secede from the Union. The country "is an integral whole, its people a single people living under a single imperium, derived from a single source", despite the different units or States into which it is divided for administrative convenience.

The Indian Union consists of 14 States and six Union territories specified in the amended First Schedule. These States and territories include what were previously the Governors' Provinces, the Indian States and the Chief Commissioners' Provinces. The rationalisation of the former ill-assorted administrative units into a coherent and balanced pattern after taking into account not only the growing importance of the regional languages but also financial, economic and administrative convenience, is the result of the scheme of reorganisation given effect to by the States Reorganisation Act, 1956 and the Bihar and West Bengal (Transfer of Territories) Act, 1956.

Unlike America and Australia, the Union in India is not composed of indestructible States. The authority to admit or establish new States as well as to alter the areas or boundaries or names of existing States is vested in Parliament. Whenever, however, a bill seeks to affect the area, boundaries or name of any of the States, the President, before it is introduced in Parliament, has to refer it to the Legislature of that State for expression of views thereon. Under the Constitution (Fifth Amendment) Act, 1955, the President can specify the period within which a State has to convey its views and it is also open to the President to extend that period if necessary.

The peaceful and democratic method by which the country has been reorganised politically stands out amongst the most notable achievements of the infant Indian Republic.

Federation

The Indian Constitution has all the characteristics of a federation. It has, for instance, (1) a written constitution, (2) a clear demarcation of powers between the States and the Centre and (3) the existence of an independent Supereme Court competent to settle disputes between the Centre and the constituent units. The Indian Constitution is federal in the sense that it establishes a dual polity with the "Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively." The Union is not a league of States, nor are the States the agencies of the Union, deriving powers from it. In this respect, it conforms to the American, Canadian and Australian patterns and differs from the unitary constitution of the United Kingdom.

Special Features

The Indian Federation, however, differs from the other federations in many vital respects. In the U.S.A. there is dual citizenship; each State has the right to grant its citizens or residents a number of rights which it may deny or grant on more difficult terms to non-residents. As opposed to this, the Indian Constitution envisages a dual polity with one citizenship and no separate citizenship for the States. Indians, no matter where they reside, are all equal in the eyes of law. The States in America have the right to make their own constitutions. In India no such power is given to the units. There is only one constitution applicable to all and one constituent authority.

Special Provisions for Jammu and Kashmir

The only exception is the State of Jammu and Kashmir which has framed its own constitution. Under article 370 the power of Parliament to make laws for this State is limited to those matters in the Union and Con-

curent Lists which, in consultation with the Government of that State, are declared by the President to correspond to matters specified in that behalf in the Instrument of Accession. It can also extend to such other matters in those Lists as may be mutually agreed upon by the Government of the State and the Government of India. Only such of the provisions of the Indian Constitution apply with exceptions and modifications to that State as are, in the case where they relate to matters mentioned in the Instrument of Accession, specified by the President in consultation with the Government of the State, and in other cases, mutually agreed upon between the Government of that State and the Government of India. Accordingly, in 1954, the President made the Constitution (Application to Jammu and Kashmir) Order, 1954, which extends Parts I, II, III, V, XI and XXII of the Constitution of India to the State of Jammu and Kashmir with certain exceptions and modifications. The Supreme Court now practically exercises the same jurisdiction in Jammu and Kashmir as in other parts of the country. The financial relations as well as the allocation of taxes between the Union and the Jammu and Kashmir State are also the same as those existing between the Union and other States.

In view of the State's special circumstances, certain alterations have been made in the application of the aforesaid provisions of the Indian Constitution to this State. For instance, the State Legislature has been authorised to make laws safeguarding the interests of permanent residents of the State in such matters as the acquisition of immovable property in the State, employment under the State Government and settlement in the State, notwithstanding that they are inconsistent with the fundamental rights conferred by the Constitution. The State Legislature has been also empowered to impose such restrictions on the exercise of the right relating to freedom of speech and expression, the right to assemble peaceably and without arms, the right to form associations or unions and the right to move freely within the State as may be necessary

to safeguard the security of the State. This power, however, is vested in the State Legislature only for a period of five years from the commencement of the Order.

While the bulk of the Union List is applicable to Jammu and Kashmir, there are certain exceptions, that is, the State retains exclusive competence in regard to matters relating to industrial and mineral development, the census and company laws (excepting banking, insurance and financial corporations). All matters relating to the constitution and organisation of the State High Court, its powers and jurisdiction, are also within the exclusive competence of the State. The Concurrent List does not apply to Jammu and Kashmir and the residuary power is vested in the State.

Uniformity in Basic Matters

In some federations the duality of polity involves a duality of legislature, executive, judiciary and service. This duplication tends to produce a diversity in law which may be desirable to cope with local needs and circumstances, but beyond a particular point it only causes confusion. A modern constitution must provide for uniformity in all basic matters. Legislative and administrative unity is envisaged by the Indian Constitution by means of (1) a single judiciary, (2) uniformity in fundamental civil and criminal law and (3) common all-India civil services.

Single Integrated Judiciary

The High Courts and the Supreme Court form a single integrated judiciary. They have jurisdiction over cases arising under various laws, constitutional, civil and criminal. The Codes of Civil and Criminal Law are placed in the Concurrent List. Uniformity is thus preserved without impairing the federal system. Uniformity in administration is ensured by placing members of all-India services in key posts. Besides, the Constitution affords the Centre and the President ample scope for initiative in all matters of national importance.

Its Flexibility

Federal systems are generally rigid. It becomes almost impossible to change them. The Indian Constitution, however, is unique in its federalism. It is at once unitary and federal according to circumstances. Normally it is meant to be federal, but in any emergency it can assume a unitary character.

The Indian Constitution has a Concurrent List of forty-seven items. In this respect, it follows the Australian example but goes a step further. To avoid the weakness of rigidity and legalism inherent in a federal polity, it vests Parliament with exclusive powers in as many as ninety-seven items. Even in normal times, the Centre's legislative authority can be extended. The comparatively easy amending process adds futher to its flexibility.

Relations Between The Union And The States

Legislative Relations

India's Constitution distributes the items for legislation among three lists : (1) the Union List, (2) the State List and (3) the Concurrent List. The respective jurisdiction of the Union and the States and their mutual relations are clearly defined. Measures enacted by the Union under the Concurrent List ordinarily have priority over corresponding State legislation. Like Canada, and unlike America, the residuary power in India is vested in the Centre.

Except for the Union territories, normally the Centre cannot legislate on any matter included in the State List. Parliament can, however, do so (1) if the Council of States recommends by at least two thirds majority that such legislation is in national interest, (2) if two or more States mutually agree that this should be done for such States, and (3), to implement treaties or international agreements or conventions.

Administrative Relations

The Indian Constitution seeks to ensure harmony between the Union and the State. The executive power of the

State must be so exercised that it ensures compliance with Union legislation. The Centre can also give directions to a State regarding the construction and maintenance of means of communication of national or military importance.

The President with the consent of the Government of a State may confer powers or impose duties on that Government or its officers in respect of matters normally outside their jurisdiction. In such cases, the Centre bears the extra cost involved in the exercise of these powers or the discharge of these duties. Under the Seventh Amendment, the Governor of a State may, with the consent of the Central Government, also entrust State functions to that Government or its officers.

Co-ordination between States

To achieve inter-State co-ordination the President is authorised to appoint an inter-State Council. The functions of the Council are :—

(a) to inquire into and advise upon disputes between the States, and

(b) to devise means for the better co-ordination of policy and action with respect to any subject in which the States or the Union and the States have a common interest.

Zonal Councils

Under the States Reorganisation Act, 1956, five Zonal Councils have been set up which will provide a forum for inter-State co-operation, the settlement of inter-State disputes and the promotion of inter-State development plans and will tender advice to the Governments concerned in these matters.

Financial Relations

Before partition the revenue resources of the Provinces were limited. The Indian Constitution seeks to remove this defect. It lays down a broad scheme for distribution of resources between the Centre and the States. But it leaves the task of detailed allocation to a

Finance Commission to be set up by the President.

EMERGENCY POWERS

Besides its many other onerous responsibilities, the Union Government has to (1) raise the standard of its administration and legislation in conformity with the Directives, (ii) plan and co-ordinate the various social service functions and nation-building activities of the units, and (iii) guarantee equal enjoyment of the benefits of democracy by all citizens. Furthermore, it has to protect every State against external aggression and internal disturbance and also to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

Thus, in an emergency, the Centre can issue any directive with respect to the exercise of the executive power by a State and its legislative and executive jurisdiction can be extended to cover the entire field of the State. The provisions for the distribution of revenues between the Union and the States can also be modified by the President. In the case of a financial emergency, the Union can give directions to any State to observe such canons of financial propriety as may be specified in the directions and such other directions as the President may deem necessary for the purpose.

By issuing a proclamation the President may also authorise the Centre to assume either partial or complete control of a State, if the latter's administrative machinery breaks down.

The importance of emergency provisions need not be exaggerated. In normal times these measures will remain a dead letter.

VII. THE EXECUTIVE

Parliamentary Government

The Indian Constitution provides for a parliamentary form of government. Accordingly, the executive is individually and collectively responsible to the legislature in respect of all its functions, decisions and actions. The legislature controls the executive primarily through its legislative authority over the purse. At general elections people are given an opportunity to elect a new Parliament.

This system of government differs basically from that of the United States of America where the President is the real executive and the Cabinet is only his shadow. Under the Indian Constitution, however, "the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the executive. He represents the nation but does not rule the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known."

Election of the President

The President is indirectly elected by an electoral college consisting of the elected members of both Houses of Paliament and the Legislative Assemblies of the States. The election is held in accordance with the system of proportional representation by means of the single transferable vote. In view of the position of the President in a parliamentary form of government, direct election was considered unnecessary. Moreover, it is difficult to provide suitable electoral machinery for all adult voters.

In the presidential election, the number of votes which each elected member of the Legislative Assembly of a

particular State can cast is ascertained by a method which will be clear from the following illustration :

The population of U.P. is 63.2 lakhs. Let us take the total number of elected members in the Legislative Assembly of U.P. which is 430. To obtain the number of votes which each such elected member is entitled to cast at the election of the President, we have first to divide 63.2 lakhs (which is the population) by 430 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case, the quotient is 1,46,976. The number of votes which each such member is entitled to cast would be 1,46,976|1000, i.e. 147 (the number has been increased by one as the remainder is more than 500).

In the case of an elected member of either House of Parliament, i.e. the Central Legislature, the number of votes which he can cast is obtained by dividing the total number of votes which the elected members of the Legislative Assemblies of the States are entitled to cast by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and those less than one-half being disregarded.

QUALIFICATIONS

The qualifications needed by a candidate for the office of President are that he should be (1) a citizen of India, (2) not less than thirty-five years of age, and (3) eligible for election as a member of the House of the People. A government servant or a servant of a local authority is, however, ineligible for election as President.

TERM OF OFFICE

The term of office of the President is five years unless he resigns earlier or is removed from office by impeachment. The President is eligible for re-election. The President will have an official residence and draw a salary of Rs. 10,000 per month. He is also entitled to the same privileges and allowances as the Governor-General had before January 26, 1950. The salary and allowances of

the President cannot be reduced, during his term of office.

Protection

The august office of the President of the Indian Republic carries with it great dignity and legal privileges. The President is not answerable to any court for the exercise and performance of the powers and duties of his office except in case of impeachment. No criminal proceedings can be instituted against him nor can he be arrested or imprisoned during his tenure of office. No civil proceedings can be instituted against him during his tenure of office without two months' written notice regarding the relief claimed.

Impeachment

The Indian Constitution provides for impeachment of the President for "violation of the Constitution." A motion preferring such charge may be initiated in either House of Parliament but must be passed in the form of a resolution by a two-thirds majority of the total membership of the House. Fourteen days' notice, signed by not less than a quarter of the total members of the House, must be given of such motion in advance. When a charge has been so preferred by one House, it shall be investigated or caused to be investigated by the other House. If a resolution is passed by the House by which the charge was investigated or caused to be investigated by a two-thirds majority of the total membership of that House sustaining the charge, the President is forthwith removed from office.

Powers

India's Constitution vests in the President all executive power of the Union, including the supreme command of the Defence Forces and the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or to commute sentences in certain cases. All important appointments will be made by him, including

those of governors, diplomats, judges of the Supreme Court and of the High Courts, the Chairman and members of the Union Public Service Commission, the Attorney-General of India, and the Comptroller and Auditor-General of India. He will also appoint the Election Commissioners and the members of Finance Commissions as well as Commissions charged with reporting on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes and investigating the conditions of socially and educationally backward classes.

The legislative authority of the President extends to the promulgation of ordinances during the recess of Parliament. He can make regulations for the peace, progress and good government of certain Union territories, namely, the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands. He can return bills other than Money Bills to Parliament for reconsideration, summon or prorogue either House or both the Houses, dissolve the House of the People, summon both Houses to meet at a joint sitting, send messages to either House and address either House or both Houses assembled together. No money can be granted by Parliament without the recommendation of the President nor can Money Bills or Bills with money clauses be introduced in Parliament except on his recommendation.

Emergency Powers

As in the case of the Weimar Constitution for Germany, the Indian Constitution gives wide powers to the President in an emergency. It contemplates three types of emergencies and correspondingly three kinds of proclamations which the President can issue.

Emergency Caused by War or Internal Disturbances

If a grave emergency exists which threatens the security of India or of any part of its territory by reason of war or external aggression or internal disturbance, the President may by proclamation declare an emergency. Sometimes this declaration may be made in anticipation

of war or aggression or civil commotion.

The authority of the President, however, is always subject to the authority of Parliament. Such a proclamation must be laid before each House of Parliament. It will cease to be operative at the end of two months unless before the expiration of that period it has been approved by both Houses of Parliament. In the event of such an emergency the Centre can exercise the legislative powers of the State. During an emergency the President can, for the whole period of the emergency or for a shorter period, suspend the right to move the courts for the enforcement of all or any of the fundamental rights. At the same time the President has the right to modify the normal allocation of the country's revenue resources for the financial year.

Failure of Constitutional Machinery in States

If the President is satisfied on the basis of reports or otherwise that the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he can by a proclamation assume to himself all or any of the functions of the Government of the State, including the powers of the Governor or of any body or authority in the State other than the State Legislature and declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. He can at the same time suspend any part of the Constitution relating to any body or authority in the State. The only exception is that he cannot assume any of the powers vested in or exercisable by a High Court, nor can he suspend the operation of any provision of the Constitution relating to High Courts.

As regards legislative powers, Parliament can delegate the powers of the State Legislature to the President or authorise the President to delegate such powers to any authority specified by him. If the House of the People is not in session, expenditure from the Consolidated Fund of the State can be authorised by him pending its sanction by Parliament.

Financial Emergency

If the President is satisfied that the financial stability or credit of India or of any part of its territory is threatened, he can proclaim a financial emergency. In such an event, he can issue necessary directions to any State, including those for the reduction of salaries and allowances of persons serving in connection with the affairs of the State and for the submission of all Money Bills and other financial bills to him for assent. He can also issue directions for the reduction of salaries and allowances of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

The procedure in respect of the declaration of a financial emergency or an emergency arising out of the failure of the constitutional machinery in a State and the duration of such emergencies will be the same as in the case of declaration of emergency on account of war or external aggression or internal disturbance. In the case of an emergency arising out of the failure of the constitutional machinery in any State, the period of emergency, however, will require to be extended every six months by Parliament and the maximum period up to which it may be extended is three years.

Although the President has all these formal powers, it does not follow that he will exercise them in an arbitrary manner. He is the titular head of the Republic. The real head of the executive will be the Prime Minister and the Cabinet, that is, the Council of Ministers will be the executive organ. The Indian Constitution ensures the leadership and dominance of the Cabinet and leaves it to Parliament, the courts and the people to keep a check on its action.

It is true that there is no specific provision in the Constitution for the President to act on the advice of his Ministers; the relationship between the President and the Council of Ministers is governed by a convention. In this matter the Indian Constitution follows the British procedure.

The Vice-President

The Indian Constitution provides for a Vice-President of India, who is the *ex-officio* Chairman of the Council of States. In this respect, his office corresponds to that of the Vice-President of the USA. When the President is unable to discharge his functions owing to illness, absence or other causes, the Vice-President discharges those functions until the President resumes his duties. If the President resigns, dies or is removed from office, the Vice-President will act as President until a new President is elected. Unlike the American Vice-President, he does not automatically become the President for the rest of the term when the latter resigns or dies.

Election and Terms of Office

The Vice-President is elected by the members of both Houses of Parliament at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote. Any citizen of India, aged not less than thirty-five years and qualified for election as a member of the Council of States, is eligible for the office. A Government servant or a servant of a local authority is, however, ineligible for the office. The term of office of the Vice-President is five years unless he resigns earlier or is removed from office. The Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People. Fourteen days' notice is required to be given of the intention to move such a resolution.

Council of Ministers

According to the Indian Constitution, a Council of Ministers, with the Prime Minister as its head, will aid and advise the President in the exercise of his functions. The leadership of the Prime Minister is explicitly recognised. The Prime Minister will be appointed by the President while the other ministers will be appointed by the President

on the advice of the Prime Minister. The Prime Minister will be a link between the Cabinet and the President. He will communicate to the President all decisions of the Cabinet and furnish him with all other information that he might like to have.

The Ministers hold office during the pleasure of President, but this provision is coupled with another which stipulates their collective responsibility to the House of the people. This means that a "minister would be liable to removal on two grounds, namely, want of confidence and impurity of administration." The Ministers are required to take oaths of office and of secrecy.

VIII. PARLIAMENT

One of the outstanding features of the Indian Constitution is adult franchise. It lays down that "the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election." This provision is characterised by some, as the "fountain spring of democracy" which entitles every adult in India, male or female, to a share in the government.

An idea of the scale the elections assume in India will be clear from the fact that 2,00,000 polling stations were provided in 3596 constituencies during the General Election held in 1957. In fact, it was the world's biggest election ever held. The number of voters were nearly 193 millions of which about half were women. For the House of the People 494 members and for the State Legislatures 2,906 members were elected.

The Constitution sweeps away all the antiquated and undemocratic qualifications—property, income, status, titles, literacy, etc., which, under the Government of India Act of 1919, debarred ninety-seven per cent and under the Government of India Act, 1935, debarred ninety per cent of the people of India from exercising their elementary right of citizenship—the right of voting. The Indian Constitution removes the notorious system of communal

electorates which had broken up Indian people statutorily into communal compartments. The citizens of India now vote as individuals and not as Hindus, Muslims or Christians. There is one general electoral roll for every territorial constituency and no person is ineligible for inclusion in such rolls on grounds of religion, race, caste or sex.

PARLIAMENT

In India, the central legislature is called Parliament. It consists of the President and two Houses known respectively as the Council of States or the Rajya Sabha, and the House of the People or the Lok Sabha. The President is an integral part of Parliament. All Bills passed by the Houses must have his assent.

RAJYA SABHA

Like other federal constitutions, the Indian Constitution also envisages a bicameral system. The Rajya Sabha, as its name implies, includes representatives from the States or the constituent units of the Indian Union. It is a permanent body, a third of its members retiring every second year. Its maximum strength is 250 and corresponds to about half the membership of the Lok Sabha. Out of these, 12 members are nominated by the President from among well-known personalities in the realm of literature, science, art and social service. The rest are representatives of the States and of the Union territories.

According to the amended Fourth Schedule, which contains provisions relating to the allocation of seats to the States, the 14 States have 213 representatives while the Union territories of Delhi, Himachal Pradesh, Manipur and Tripura have 7 representatives.

Elections to the Rajya Sabha are indirect. In other words, the representatives of each State are not elected directly by the people but are elected by the elected members of the Legislative Assembly of the State. Elections are held according to the system of proportional representation by means of the single transferable vote. Under this system, a voter votes for only one candidate, but he

may indicate the sequence of candidates for whom he would like to have his second and subsequent preferences. By this arrangement, he is reasonably assured that his vote will not be wasted. As regards the representation of the Union territories, the Indian Constitution leaves the method of selection of representatives to be determined by Parliament.

The Lok Sabha

The maximum strength of members of the Lok Sabha to be chosen by direct election from territorial constituencies in the States is fixed at 500. In addition there will be a maximum of 20 members representing the Union territories to be chosen in such manner as Parliament may be law provide. Provision has also been made for the reservation of seats in the Lok Sabha for the Scheduled Castes and Scheduled Tribes. Not more than two members of the Anglo-Indian community can be nominated by the President to the Lok Sabha if the Anglo-Indian community is not adequately represented therein.

Normally the life of the Lok Sabha is five years unless it is dissolved earlier. During an emergency, its life can be prolonged for a period not exceeding one year at a time. It cannot, however, be extended beyond a period of six months after the Proclamation of Emergency has ceased to operate.

Allotment of Seats and Constituencies

Each State shall be allotted seats in the Lok Sabha in such manner that the ratio between the number of such seats and the population of the State is, so far as practicable, the same for all States.

For purposes of election, the States are divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

On the completion of each census, the allocation of seats in the Lok Sabha to the States and the division of

each State into territorial constituencies is to be readjusted by such authority and in such manner as Parliament may determine by law.

Fair Elections

To ensure fair elections, an independent Election Commission has been appointed. It is responsible for the preparation of electoral rolls and the conduct of elections. To that end the Chief Election Commisioner has been assured of an independent status.

Sessions

India's Constitution, as amended by the Constitution (First Amendment) Act, 1951, provides that the President shall summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and its first sitting in the next session. This ensures that the sessions of Parliament will be held regularly.

The quorum prescribed is ten per cent of the total membership of the House. All questions shall be determined by a majority of votes of the members present and voting. The Speaker or Chairman or the person acting as such is given only a casting vote. The presiding officers of the Rajya Sabha are called the Chairman and the Deputy Chairman. The corresponding officers of the Lok Sabha are the Speaker and the Deputy Speaker.

Qualifications

The qualifications for a member of Parliament are that he shall (1) be a citizen of India, (2) be not less than thirty years of age in the case of the Rajya Sabha and not less than twenty-five years of age in the case of the Lok Sabha, and (3) possess such other qualifications as may be laid down by Parliament

Disqualifications

A person is disqualified both for being chosen as, and

for being, a member of Parliament if he, (a) holds an office of profit under any Government in India, other than an office declared by Parliament by law not to disqualify its holder, (b) is of unsound mind, (c) is an undischarged insolvent, (d) has voluntarily acquired the citizenship of a foreign state, or (e) is disqualified by or under any law made by Parliament.

Every question as to whether a member has become subject to any of those disqualifications is to be referred to the President for decision. He is, however, required to act according to the opinion of the Election Commission in these cases.

PRIVILEGES

The Indian Constitution assures members freedom of speech in Parliament. This freedom, however, is subject to the provisions of the Constitution and to the rules and standing orders of Parliament. The members are also granted immunity from action in a court of law for any speeches made or votes given by them either in the House or in any of its committees. This protection also covers the publication of the proceedings of the House under its authority. Until defined by Parliament by law, other powers, privileges and immunities of each House and of the members and committees thereof are the same as those of the House of Commons and of its members and committees in the United Kingdom.

LEGISLATIVE PROCEDURE

Although there is a bicameral legislature at the Centre, the Constitution of India safeguards the supremacy of the Lok Sabha in certain matters of legislation. In financial matters, its authority is final. The detailed rules of procedure are to be framed by each House of Parliament. The Constitution only lays down broad outlines of procedure. Among others, it provides that all Bills other than Money Bills and Bills with money clauses can be introduced in either House. The Money Bills and Bills with money clauses must be initiated in the Lok Sabha.

Procedure Regarding Ordinary Bills

A Bill which is not a Money Bill must be passed by both Houses. But in case of a deadlock between the two Houses, the President can summon them to meet in a joint sitting. At such joint sittings decisions are taken by a majority of the total members of both the Houses present and voting. A Bill so adopted is deemed to have been passed by both the Houses.

Procedure Regarding Money Bills

A Money Bill, after it is passed by the Lok Sabha, is sent to the Rajya Sabha which must return it with its recommendations within fourteen days. The Lok Sabha may accept or reject such recommendations. The Bill as finally adopted by the Lok Sabha is considered to have been passed by both Houses.

Annual Financial Statement

Under the Indian Constitution, the President shall, in respect of each financial year, cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India. This is called the "Annual Financial Statement". It shows the sums to be charged on the Consolidated Fund of India, that is, the central purse and the money required to meet other expenditure. The former category of expenditure is non-votable while the latter is votable.

Financial Procedure

Parliament has an opportunity to exercise effective control over the finances of the Government of India. Votable estimates are to be submitted directly to the Lok Sabha. The Rajya Sabha does not come into the picture at the stage of voting on grants. The Lok Sabha can assent to, refuse or reduce the grant. All demands for grants are made on the recommendation of the President.

After the demands for grants follow the Appropriation Bill, which seeks to appropriate from the Conso-

lidated Fund of India monies required to meet the grants made by the Lok Sabha and the expenditure charged on the Consolidated Fund. The procedure adopted follows that of Great Britain, Canada, Australia and South Africa. No amendment of the Bill is permissible if it seeks to vary the amount, or later the destination, of any grant or to vary the amount of any expenditure charged on the Consolidated Fund. It is further provided in the Indian Constitution that no monies from the Consolidated Fund shall be withdrawn except in conformity with the provisions of the Appropriation Act.

The taxation proposals of the Government and other relevant matters form the subject of the Finance Bill. The Finance Bill is introduced in the Lok Sabha on the recommendation of the President.

Other Grants

The Lok Sabha has been given the power to make any grant in advance pending the completion of procedure. This is known as vote on account. This procedure will enable the House to devote more time to discussion of the budget. It will no longer be necessary for the House to vote on all demands for grants by the end of the financial year.

The Lok Sabha can also make grants to meet unexpected demands for money by votes of credit and make exceptional grants. The Indian Constitution also empowers the Lok Sabha to sanction any supplementary, additional or excess grants. In such cases, however, until the necessary Appropriation Bill is passed, the President can make advances out of the Contingency Fund.

IX. THE STATES

THE EXECUTIVE

The government machinery of the States closely resembles that of the Union. The executive power of the State is vested in the Governor. Under the Indian Constitution as amended by the Constitution (Seventh Amendment) Act, 1956, the same person can be appointed as Governor of one or more States. The Governor can exercise the executive power either directly or through his subordinate officers. This, however, does not prevent Parliament or the Legislative of the State from conferring functions on any authority subordinate to the Governor.

The Governor is appointed by the President by warrant under his hand and seal. He holds office for five years unless he resigns or his office is terminated earlier. Only Indian citizens who have attained the age of 35 are eligible for appointment. A Governor shall not be a member of Parliament or of a State Legislature and if a person is such a member at the time of his appointment as Governor, his seat in Parliament or the State legislature, as the case may be, will become vacant on the date on which he assumes office as Governor.

Besides free official residence, the Governor of a State will draw a salary of Rs. 5,500 per month, and such other allowances and privileges as were previously received or enjoyed by the Governor of the corresponding Province. In case, there is a common Governor of two or more States, the emoluments and allowances payable to the Governor are to be allocated among those States in such proportion as the President may by order determine. The salary and allowances of a Governor cannot be reduced during his term of office.

The Governor appoints the Chief Minister and on his advice the other ministers. He also appoints the

Advocate-General. He can make rules for the transaction of the business of the Government of the State. He has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute sentences in certain cases. He summons or prorogues the House or Houses, as the case may be, of the State Legislature and can dissolve the Legislative Assembly. He gives assent to a Bill or reserves it for consideration of the President. He can return a Bill for reconsideration by the Legislature, send messages to or address the House or Houses. Like the President, he is empowered to promulgate ordinances during the recess of the Legislature. No Money Bill or Bill with money clauses can be introduced nor can any demand for grant be made in the Legislative Assembly except on his recommendation.

As at the Centre, there is a Council of Ministers to aid and advise the Governor in the exercise of his functions. For the States also the Indian Constitution has provided for the cabinet system. In order to furnish the Governor with all necessary information and thus to enable him to exercise his authority more effectively, as head of the State, the Chief Minister is required (1) to submit to him all decisions of the Council of Ministers relating to administration and proposals for legislation, (2) to supply such information relating to administration and proposals for legislation as the Governor may call for, and (3) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter which has not been considered by the Council. The Constitution of India requires each of the States of Bihar, Madhya Pradesh and Orissa to have a Minister in charge of tribal welfare.

The President may, with respect to the State of Andhra Pradesh or Punjab, provide for any special responsibility of the Governor to secure the proper functioning of the regional committees of the Legislative Assembly of the State when such committees have been set up by order of the President.

The President may also by order made with respect

to the State of Bombay repose special responsibility in the Governor for the establishment of separate development boards for Vidarbha Marathwada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat. A report on the working of each of these boards will be placed before the State Legislative Assembly every year. This special responsibility may include a duty to ensure (1) that there is an equitable allocation of funds for developmental expenditure for these areas subject to the requirements of the State as a whole and (2) that adequate facilities for technical education and vocational training as well as opportunities for employment in State services are provided for in respect of all these areas.

The head of the State in Jammu and Kashmir is called the Sadar-i-Riyasat. The Sadar-i-Riyasat shall be the person who for the time being is recognised by the President of India as such, but no person shall be so recognised unless he has been elected as Sadar-i-Riyasat by the Legislative Assembly of the State by a majority of its total membership. He holds office for a term of five years subject to the pleasure of the President. According to the new Constitution of the State, he is empowered to appoint the Chairman and other members of the Public Service Commission, the Advocate General for the State and the Election Commissioner and to establish an Academy of Arts, Culture and Languages.

Administration of Union Territories

Save as otherwise provided by Parliament by law, every Union territory is to be administered by the President acting, to such an extent as he thinks fit, through an administrator appointed by him. The President can also appoint the Governor of a State as the administrator of an adjoining Union territory and when a Governor is so appointed he will exercise his functions as administrator independently of his Council of Ministers.

The State Legislature

Like the Centre, each State Legislature consists of

the head of the State and the legislative chamber or chambers of the State. The States of Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh, and West Bengal have each a bicameral legislature comprising the Legislative Assembly and the Legislative Council, and each of the remaining States has a unicameral legislature known as the Legislative Assembly. The bicameral system has been adopted as an experimental measure. Parliament is, however, authorised to abolish the Legislative Council of a State or create it in any other State if the Legislative Assembly of the State concerned passes a resolution to that effect by a majority of the total membership of that Assembly and of not less than two-thirds of the members present and voting. The law giving effect to this resolution will not be treated as an amendment of the Constitution.

Legislative Assembly

The Legislative Assembly of a State has a normal life of five years unless dissolved earlier. Like the House of the People, that is, the Lok Sabha, its duration can be extended in an emergency for a period not exceeding a year at a time. It cannot be extended beyond a period of six months after the Proclamation of Emergency has ceased to operate.

The Legislative Assembly of a State is elected on the basis of adult franchise. The total number of its members cannot be more than 500 or less than 60. For the purpose of election of members to the Legislative Assembly each State is divided into territorial constituencies in such a manner that the ratio between the population (as ascertained at the last preceding census) of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State. On the completion of every census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies is to be readjusted by such authority and in such manner as Parliament may determine by law.

There is no reservation of seats except for the Scheduled Castes, Scheduled Tribes and the autonomous districts of Assam. The Governor can also nominate members of the Anglo-Indian community to the Legislative Assembly if he is of opinion that the community needs representation and is not adequately represented.

The qualifications for a member of the Legislative Assembly are that he shall (1) be a citizen of India, (2) be not less than twenty-five years of age, and (3) possess such other qualifications as may be prescribed by Parliament.

Legislative Council

The Legislative Council of a State can have not less than forty members and not more than a third of the total membership of the Legislative Assembly of that State. It has a diverse personnel. Nearly a third of its members is elected by electorates consisting of members of municipalities, district boards, and such other local authorities in the State as Parliament may specify. About a twelfth is elected by electorates comprising graduates of not less than three years' standing. Another twelfth is elected by electorates comprising graduates of not less than three years' standing. Another twelfth is elected by teachers who have worked for at least three years within the State in an educational institution, not lower in standard than that of a secondary school. A third is elected by members of the Legislative Assembly of the State from among those who are not members of that Assembly. The remainder is nominated by the Governor and they are to be persons who have special knowledge of or practical experience in such matters as, literature, science, art, co-operative movement and social service.

The Legislative Council of a State is a permanent body with one-third of its members retiring every second year. The minimum age for being a member of the Legislative Council is thirty years. Other qualifications are the same as those of members of the Legislative Assembly.

X. THE THREE SAFEGUARDS

JUDICIARY

A well-integrated, competent and independent judiciary is the guardian of democracy. It safeguards the rights and liberties of the people. In a federal structure it is also the custodian of the Constitution. For it is only through the judiciary that the powers of the different organs are kept under control. Besides a directive, the Indian Constitution has adopted special provisions to give the judiciary an independent status.

SUPREME COURT

At the apex of the Indian judiciary stands the Supreme Court. Normally it will consist of a Chief Justice of India and seven other Judges. But Parliament is authorised to prescribe a larger number of Judges. A law has now been enacted by Parliament prescribing ten as the maximum number of Judges of the Supreme Court, excluding the Chief Justice. In the method of appointment of the Judges, the Indian Constitution follows a middle course. It does not give absolute discretion to the executive as in Great Britain. Nor does it imitate the American system, in which the President appoints Judges with the concurrence of the Senate. Thus in the appointment of the Judges, the Indian Constitution stipulates adequate consultation with judicial authorities. In the case of the appointment of the Chief Justice of India or any other Judge of the Supreme Court, the President is required to consult such Judges of the Supreme Court and of the High Courts as he may deem necessary. Further for the selection of any Judge of the Supreme Court other than the Chief Justice, the President must consult the Chief Justice.

TENURE

In order to attract the best legal talent in the country, any Judge of a High Court of at least five years' standing or an advocate of a High Court with ten years' practice or a distinguished jurist is eligible to become a Judge of the Supreme Court. Security of tenure is guaranteed to every Judge. He holds office till he is sixty-five years old. He can be removed on the ground of proved misbehaviour or incapacity. The President can remove a judge only when an address has been presented to him for such removal by each House of Parliament, supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

The Constitution debars Judges of the Supreme Court from pleading or acting in any court or before any authority in India after retirement. The terms of service of Judges include free accommodation for the Chief Justice and other Judges who draw a monthly salary of Rs. 5,000 and Rs. 4,000 respectively. Once appointed, their privileges, allowances and rights in respect of leave or pension cannot be altered to their disadvantage.

Provision has also been made for the appointment of *ad hoc* and retired Judges to sit on the Supreme Court. Thus with the consent of the President, the Chief Justice may appoint any eligible Judge of a High Court as an *ad hoc* Judge for a specified period.

Following the practice in the United States and the United Kingdom, retired Judges can be asked by the Chief Justice, with the consent of the President, to sit and act as Judges for special purposes. They will not, however, be deemed full-fledged Judges of the Court, although they will enjoy all jurisdictional powers and privileges.

Furthermore, the President can appoint one of the Judges of the Supreme Court as Acting Chief Justice in the absence of the Chief Justice.

Seat

The Supreme Court will normally sit at Delhi. It may also sit at such other place or places as the Chief Justice may from time to time appoint with the approval of the President.

Jurisdiction

Under the Indian Constitution, the Supreme Court has wider powers than the highest Court in any federation of the world, including the Supreme Court of America. As a court of record, it has all the powers of such a court, including the power to punish for contempt of court. It is both a final interpreter of the Constitution and a final court of civil appeal. In criminal matters, it is empowered with criminal appellate jurisdiction in certain specified cases.

The original jurisdiction of the Supreme Court relates to disputes arising either between a State and the Government of India, or between the States. Disputes arising out of the provisions of any treaty, agreement, etc. which, having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement or which provides that the jurisdiction of the Supreme Court shall not extend to such a dispute are, however, outside the original jurisdiction.

The appellate jurisdiction of the Supreme Court is three-fold : constitutional, civil and criminal. In constitutional matters, an appeal will lie if the High Court certifies that the case involves a substantial question of law regarding the interpretation of the Constitution. The Supreme Court, however, can itself grant special leave if it is satisfied that the case involves such a question. In civil cases, an appeal will generally lie to the Supreme Court, if the High Court certifies that the value of the subject matter of the dispute or the amount of the claim involved is not less than Rs. 20,000, or that the case is a fit one for appeal to the Supreme Court. In criminal matters, an appeal will lie to the Supreme Court if the

High Court has (1) on appeal reversed the order of acquittal of an accused person and sentenced him to death, or (2) withdrawn from trial any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or (3) certified that the case is a fit one for appeal to the Supreme Court.

The appellate jurisdiction in criminal matters can be extended by Parliament by law subject to such conditions and limitations as may be specified therein.

Other Jurisdiction

The Supreme Court also inherits the jurisdiction and powers of the Federal Court with respect to matters not specifically mentioned in the Indian Constitution. It is given a vast revisory jurisdiction over all courts and tribunals. It can grant special leave for appeal from the judgment or order of any court or tribunal in the country except a court or tribunal constituted by or under any law relating to the Armed Forces. Moreover, its jurisdiction can be extended by Parliament in several other ways.

Advisory Functions

The Supreme Court has also certain advisory functions. The President can refer to it any question of law or fact of public importance for opinion. Under this jurisdiction, even those disputes, which involve interpretation of treaties, agreements, etc. and over which the Court has no original jurisdiction, can be referred to it for opinion.

Procedure

The Supreme Court has powers to frame rules for regulating its practice and procedure subject to the approval of the President and the provisions of any law made by Parliament. The Supreme Court shall deliver all judgments in public and every judgment must have the concurrence of a majority of the Judges present at the

hearing of the case. But in case a Judge differs from his colleagues, he can deliver a dissenting judgment.

As the highest court of the country, the law declared by the Supreme Court is binding on all courts in India. Subject to the provisions of any law made by Parliament and the provisions of any rules made by it, the Supreme Court is also given the power to review its judgments and orders.

Independence of the Supreme Court

To ensure the independence of the Supreme Court, the Chief Justice of India, or such other Judge or officer of the Court as he may direct, is given the authority to recruit its staff and to frame rules regarding their conditions of service. To ensure the same end, the administrative expenses of the Supreme Court, including the salaries, allowances and pensions, payable to its officers and servants, are charged on the Consolidated Fund of India. All fees and other moneys taken by the Court form part of that Fund.

High Courts

India's Constitution envisages a High Court for each State. But power has been conferred on Parliament to establish, by law, a common High Court for two or more States or for two or more States and a Union territory. A High Court is to consist of the Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Under the Seventh Amendment of the Constitution, additional and acting Judges can also be appointed.

The appointment of the Judges is made by the President after consultation with the Chief Justice of India and the Governor of the State. In the case of the appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court concerned is also consulted. A Judge other than an additional or acting Judge will hold office till the age of sixty. The qualifications prescribed for the appointment of a High Court Judge are

different from those prescribed for the appointment of a Judge in the Supreme Court. Any citizen of India who has either held a judicial office for 10 years or has been an advocate of a High Court for 10 years is eligible for this office.

As regards the salaries, the Chief Justice of a High Court draws Rs. 4,000 per month and any other Judge Rs. 3,500 per month. Like the Judges of the Supreme Court, the allowances of a Judge of a High Court and his rights in respect of leave or pension cannot be altered to his disadvantage during his tenure of office. The provision regarding the appointment of the Acting Chief Justice is similar to that applicable to the Supreme Court.

Provision has been made by the Constitution (Seventh Amendment) Act, 1956, for the appointment of additional Judges for a period not exceeding two years and for the appointment of acting Judges during the temporary absence of a permanent Judge. No person appointed as an Additional or Acting Judge can hold office after attaining the age of sixty years.

Formerly a Judge of a High Court was debarred from pleading or acting in any court or before any authority in India after his retirement. Under the Seventh Amendment of the Indian Constitution, the ban applies only to permanent Judges of a High Court. Even they are permitted to practise in the Supreme Court and in a High Court other than the one from which they have retired.

The provisions relating to the High Courts are based on the corresponding provisions contained in the Government of India Act, 1935. Subject to the provisions of the Constitution, and the provisions of any law made by the appropriate legislature, the High Courts in the States retain the jurisdiction and powers which they had immediately before the commencement of the Constitution. The limitations on their original jurisdiction over matters concerning revenue and its collection are, however, removed. The High Courts are also given powers (1) of issuing writs for the enforcement of fundamental rights and for other purposes, (2) of superintendence over all courts

in the territories in relation to which they exercise jurisdiction and tribunals other than those constituted by or under any law relating to the Armed Forces, and (3) of taking over cases from subordinate courts involving questions as to the interpretation of the Constitution.

Parliament can extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union territory.

To ensure the independence of the High Courts, the powers to recruit the staff of each High Court and to frame rules regarding their conditions of service are vested in the Chief Justice of the Court or in such other Judge or officer of the Court as the Chief Justice may direct. The administrative expenses of the High Court are charged on the Consolidated Fund of the State. The fees and other moneys taken by the Court form part of that Fund.

Subordinate Courts

According to the Indian Constitution, the appointment, posting and promotion of district judges in a State is made by the Governor in consultation with the High Court of the State. The requisite qualifications for appointment to the post of a district judge, in the case of a person not already in the service of the Union or of the State, is that he should have been an advocate or a pleader for at least seven years and should be recommended for appointment by the High Court. Appointments of persons other than district judges to the judicial service of a State are made by the Governor in accordance with rules made by him after consultation with the State Public Service Commission and the High Court. The control over district and other subordinate courts, including the posting and promotion of, and the grant of leave to, persons in the judicial service holding any post inferior to the post of district judge, is vested in the High Court.

Public Services

The standard and efficiency of administration in any country depend ultimately on the calibre, training and

integrity of the members of the public services. By providing the basic conditions of public services, namely, tenure of office, rights, privileges and the method of recruitment, the Indian Constitution seeks to attract men of vision, ability and honesty to man the administrative machinery of a Welfare State. It guarantees equality of opportunity in matters of public employment, although an exception has been made in the case of the Scheduled Castes and Scheduled Tribes whose claims will be taken into consideration, subject to the maintenance of efficiency of administration, for appointments to services and posts.

PUBLIC SERVICE COMMISSIONS

Recruitment to public services through a public service commission is a well-recognised principle in democratic States. As this principle has already been put into practice the Constitution of India provides for a public service commission for the Union and for each State. But it also permits two or more States to have a joint public service commission, provided a resolution to that effect is passed by the House or each House of the legislature of the States concerned. In that case, Parliament may by law provide for the appointment of a joint commission to serve the needs of those States. The States can also approach the Union Public Service Commission to act on their behalf and the Commission may, with the approval of the President, do so.

The main function of the Union and State Public Service Commissions is to recommend candidates for appointment and to conduct examinations for recruitment to the Union and State services respectively. The Union Public Service Commission will also assist, if so requested by two or more States, in framing and operating schemes of joint recruitment for any services for which candidates with special qualifications are required. As guardians of the services, the public service commissions are to be consulted—

(a) on all matters relating to methods of recruitment to civil services and posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions and transfers; and

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters.

They are also to be consulted on matters regarding claims by or in respect of persons who are serving or have served the Government in civil capacities for costs incurred by them in defending legal proceedings instituted against them for acts done in the execution of their duties, as well as regarding claims for the award of pensions in respect of injuries sustained by persons while serving under the Government in civil capacities. The advisory functions of a public service commission include the giving of advice not only on the above matters but on any other matters which may be referred to them by the President or the Governor, as the case may be. The heads of the Union and the States can, however, provide by regulations that it will not be necessary to consult the public service commission in certain matters in general or in any particular class of cases or in any particular circumstances.

PERSONNEL

The Chairman and other members are appointed, in the case of the Union or a Joint Commission, by the President and in the case of a State Commission, by the Governor of the State.

The total number of members of the commission is not fixed by the Indian Constitution. The exact strength and the conditions of service are laid down by the respective heads of administration. The conditions of service, cannot, however, be varied to the disadvantage of the mem-

bers after their appointment.

As the function of the commission is to choose suitable personnel for the public services it is essential for the members to be men of experience. The Indian Constitution, therefore, provides that nearly half the members of every commission should be persons who have been for at least ten years in service under the Government.

Term of Office

The term of office of a member of a public service commission is fixed at six years or until he attains, in the case of the Union Commission, the age of sixty-five, and, in the case of a State Commission or a Joint Commission, the age of sixty.

Removal of Members

The members of a public service commission are liable to be removed by the President on the ground of misbehaviour. The principle followed in this case is based on the provisions of the Government of India Act, 1935, for the removal of High Court and Federal Court judges. Accordingly, the Indian Constitution provides for an enquiry by the Supreme Court on the basis of which the President will take action.

Independence of the Commission

In order to ensure integrity and impartiality, the members of a commission are ineligible for further employment under any Government except in certain cases, namely, the employment as chairman or members of the Union Public Service Commission or as chairman of a State Public Service Commission. Another step taken to ensure the independence of the commission is to charge their expenses, including salaries, allowances and pensions, on the Consolidated Funds. In other words, the emoluments of the members of the public service commissions are declared non-votable and their tenure is not subject to the vicissitudes of political parties and favouritism.

Moreover, regulations made by the President or Governors in removing matters from the purview of the respective commissions, are to be laid before each House of their legislatures. To prevent arbitrary rejection of the recommendations of the public service commissions, the Constitution of India enjoins that the public service commissions shall present annual reports to the heads of Governments concerned covering the work done by them during the year. The Central Government and each State Government in their turn are required to place before each House of Parliament or the State Legislature, as the case may be, a copy of the report together with a memorandum explaining, in respect of cases where the advice of the commission has not been accepted, the reasons for such non-acceptance. The ministers are thus answerable for all deviations from the recommendations of the public service commissions. In this way the recognition of merit in the selection of personnel for public service is assured.

Finances and Accounts

The Comptroller and Auditor-General of India keeps a vigilant watch on the finances and accounts of the Union and of the States. He is appointed by the President and has an independent status like that of a Judge of the Supreme Court. He scrutinises the accounts and reports on all cases of misappropriation. He also ensures that the monies voted by the legislatures are spent under appropriate heads. His annual reports relating to the accounts of the Union and of the States are submitted to the respective heads of Governments and are laid before the legislatures concerned.

XI. CONCLUSION

The Indian Constitution envisages a democratic secular State. It makes India the largest of the existing democracies and creates an electorate which is estimated to be one-twelfth of the world's entire population. It endeavours to translate into practice the noble concept of a socialistic society,—a blending of the ballot paper and economic democracy. It includes the most elaborate declaration of human rights so far framed by any State. For the first time in the history of India, the country has been territorially integrated and woven into one political texture. India is now a nation.

The Indian Constitution is a flexible and workable constitution, designed to suit all eventualities. The federal structure may function as a unitary system in the event of an emergency like war. This is based on a well-recognised principle that in an emergency it is the Centre which commands the residuary loyalty of the country. The over-riding powers of the Centre, however, are sometimes criticised as being unfair to the units. But this is an erroneous conception; for the basic feature of a federation is the distribution of authority between the Centre and the Units. In the Indian Constitution except in emergencies this character will remain unimpaired and not even courts can alter it fundamentally. Moreover, the over-riding powers of the Centre are not meant to be a normal feature of the Constitution. They are expressly confined to emergencies. They correspond to the heavy responsibilities of the Centre.

Nevertheless the Constitution is only a mechanism. "However good a constitution may be", observed the late Dr. Ambedkar, "it is sure to turn out bad because those who are called to work it happen to be a bad lot." The

success of a constitution depends upon national character, the spirit in which it is operated and the goodwill of the people working it. But the ultimate form and character of our Government will also rest on our laws, principles, conventions and precedents, and more than anything else, on the sense of fairplay, justice and equity displayed by political parties and the active and willing co-operation of the people.

The Indian Constitution is often described as the Charter of Indian Independence. But no constitution by itself can become the citadel of a nation's independence. "If the parties place creed above country", remarked the late Dr. Ambedkar, "our independence will be put in jeopardy a second time and probably lost for ever. This eventuality we must resolutely guard against. We must be determined to defend our Independence with the last drop of our blood."

APPENDICES

STATES

Serial No.	State/Territory	Area (in sq. miles)	Population	Capital/ Headquarters
	STATES			
1.	Andhra Pradesh	105,700	31,260,133	Hyderabad
2.	Assam ..	85,062	9,043,707	Shillong
3.	Bihar ..	67,113	38,783,778	Patna
4.	Bombay ..	190,668	48,265,211	Bombay
5.	Jammu & Kashmir *	92,780	4,410,000	Srinagar
6.	Kerala ..	14,937	13,549,118	Trivandrum
7.	Madhya Pradesh	171,300	26,071,637	Bhopal
8.	Madras ..	50,174	29,974,936	Madras
9.	Mysore ..	74,861	19,401,193	Bangalore
10.	Orissa ..	60,250	14,645,946	Bhubaneswar
11.	Punjab ..	47,062	16,134,890	Chandigarh
12.	Rajasthan ..	132,098	15,970,774	Jaipur
13.	Uttar Pradesh ..	113,423	63,215,742	Lucknow
14.	West Bengal ..	33,885	26,302,386	Calcutta
	TERRITORIES			
1.	Andaman and Nicobar Islands ..	3,215	30,971	Port Blair
2.	Delhi ..	573	1,744,072	Delhi
3.	Himachal Pradesh	10,922	1,109,466	Simla
4.	Laccadive, Minicoy & Aminidive Islands ..	42	21,035	..
5.	Manipur ..	8,629	577,635	Imphal
6.	Tripura ..	4,022	639,029	Agartala
	Total ..	1,266,716	361,151,669	

* Provisional.

Public Services in India

(All-India Services)

Without depriving the States of their right to form their own public services, the Indian Constitution enables the creation of one or more all-India services recruited on an all-India basis, and members of these services will be appointed to important posts in the Union. The Indian Administrative Service and the Indian Police Service are examples of such services. But similar services can be created by Parliament by law if the Rajya Sabha declares by resolution supported by not less than two-thirds of the members present and voting, that it is necessary in the national interest to do so.

Rules and Regulations

Subject to its provisions, the Indian Constitution vests authority in the respective legislatures to regulate by law the recruitment, and the conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or the States. Till such laws are enacted, the respective Heads of Governments or persons so directed by them are permitted to make the necessary rules.

Tenure of Office

All public servants in India, whether in the Union or State services, will hold office during the pleasure of the respective Heads of their Governments. A civil post held under a contract is, however, an exception to this rule; a person holding such a post may be required to vacate it, either because it is abolished or for any reason other than misconduct; on payment of such compensation as may be provided in the contract.

In matters of dismissal or removal or reduction in rank of persons employed in civil capacities, the Indian Constitution provides safeguards, which are as follows :

(1) that no such public servant will be dismissed or

removed by an authority subordinate to that by which he was appointed.

(2) that no dismissal or removal or reduction in rank will be effected until such public servant has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

But this latter safeguard is denied in the following cases :

(a) where the dismissal, removal or reduction in rank takes place as a result of the conviction of the public servant on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause;

(c) where the Head of the Government concerned is satisfied that in the interest of the security of the State it is not expedient to give such an opportunity to that person.

Guarantee of Certain Privileges to Members of Secretary of State's Services

There is a special provision in the Indian Constitution which assures the continuance of certain constitutional guarantees given to members of the former Secretary of State's Services. This provision, covering the members of the Indian Civil Service, the Indian Medical Service, the Indian Police Service, the Indian Medical Service, the Indian Police Service, etc., guarantees them, as far as changed circumstances permit, the same condition, and the same or similar rights regarding disciplinary matters as they were entitled to immediately before the commencement of the Constitution. This guarantee is provided for in conformity with the pledge given by the leaders of the nation at the time of the transfer of power to the Dominion of India.

Articles 343 and 351 of, and the Eighth Schedule to, the Constitution of India which deal with the official language of the Union are reproduced below :—

(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement;

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may be law provide for the use, after the said period of fifteen years, of

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.

DIRECTIVE FOR DEVELOPMENT OF THE HINDI LANGUAGE

351. It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

IMPORTANT LANGUAGES OF INDIA

1. Assamese
2. Bengali
3. Gujarati
4. Hindi
5. Kannada
6. Kashmiri
7. Malayalam
8. Marathi
9. Oriya
10. Punjabi
11. Sanskrit
12. Tamil
13. Telugu
14. Urdu

THE CITIZENSHIP ACT, 1955

No. 57 of 1955

[30th December, 1955]

An act to provide for the acquisition and termination of Indian citizenship

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

1. This Act may be called the Citizenship Act, 1955.

2. (1) In this Act, unless the context otherwise require,—

(a) "a Government in India" means the Central Government or a State Government;

(b) "citizen", in relation to a country specified in the First Schedule, means a person who, under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;

(c) "citizenship or nationality law", in relation to a country specified in the First Schedule, means an enactment of the legislature of that country which, at the request of the Government of that country, the Central Government may, by notification in the Official Gazette, have declared to be an enactment making provision for the citizenship or nationality of that country :

Provided that no such notification shall be issued in relation to the Union of South Africa except with the previous approval of both Houses of Parliament;

(d) "Indian consulate" means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;

(e) "minor" means a person who has not attained the age of eighteen years;

(f) "person" does not include any company or association or body of individuals, whether incorporated or not;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "undivided India" means India as defined in the Government of India Act, 1935, as originally enacted.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor, and of full capacity if he is not of unsound mind.

Acquisition of Citizenship

3. (1) Except as provided in sub-section (2) of this section, every person born in India on or after the 26th January, 1950, shall be a citizen of India by birth.

(2) A person shall not be such a citizen by virtue of

this section if at the time of his birth—

(a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

4. (1) A person born outside India on or after the 26th January, 1950, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth :

Provided that if the father of such a person was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any male person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. (1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories :—

(a) persons of Indian origin who are ordinarily resident in India and have been so resident for six months immediately before making an application for

registration;

(b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;

(c) women who are, or have been, married to citizens of India;

(d) minor children of persons who are citizens of India; and

(e) persons of full age and capacity who are citizens of a country specified in the First Schedule :

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, or any of his grand-parents, was born in undivided India.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship, or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b) (ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Consti-

tution or the date on which he was so registered, whichever may be later.

6. (1) Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the First Schedule for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule be a citizen of India by naturalisation as from the date on which that certificate is granted.

7. If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

TERMINATION OF CITIZENSHIP

8. (1) If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India :

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a male person ceases to be a citizen of

India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India :

Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

(3) For the purposes of this section, any woman who is, or has been, married shall be deemed to be of full age.

9. (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as case may be, such commencement, cease to be a citizen of India :

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

10. (1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) or section 5 of this Act shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that—

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himstlf by act or

speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefor in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee

of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

SUPPLEMENTAL

11. Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

12. (1) The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule.

(2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.

13. The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India ; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

14. (1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under section 5 or section 6 and shall not be required to assign any reasons for such grant or refusal.

(2) Subject to the provisions of section 15, the deci-

sion of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

15. (1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for a revision of that order :

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

16. The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

18. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the registration of anything required or authorised under this Act to be registered, and the

conditions and restrictions in regard to such registration;

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act, and the time within which, and the manner in which, such oaths shall be taken and recorded;

(d) the giving of any notice required or authorised to be given by any person under this Act;

(e) the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;

(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil courts;

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and

(k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be

punishable with fine which may extend to one thousand rupees.

(4) All rules made under this section shall, as soon as may be after they are made, be laid for not less than fourteen days before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which they are so laid.

19. (1) The British Nationality and Status of Aliens Acts, 1914 to 1943, are hereby repealed in their application to India.

(2) All laws relating to naturalisation which are in force in any part of India are hereby repealed.

THE FIRST SCHEDULE

[*See* sections 2(1) (b) and 5(1)(e)]

A. The following Commonwealth countries :—
   1. United Kingdom.
   2. Canada.
   3. Commonwealth of Australia.
   4. New Zealand.
   5. Union of South Africa.
   6. Pakistan.
   7. Ceylon.
   8. Federation of Rhodesia and Nyasaland.

B. The Republic of Ireland.

Explanation.—In this Schedule, "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and includes the Channel Islands, the Isle of Man and all Colonies; and "Commonwealth of Australia" includes the territories of Papua and the territory of Norfolk Island.

THE SECOND SCHEDULE

[*See* sections 5(2) and 6(2)]

OATH OF ALLEGIANCE

I, A. B........................do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that

I will faithfully observe the laws of India and fulfil my duties as a citizen of India.

THE THIRD SCHEDULE

[*See* section 6(1)]

QUALIFICATIONS FOR NATURALISATION

The qualifications for naturalisation of a person who is not a citizen of a country specified in the First Schedule are: —

(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation ;

(b) that, if he is a citizen of any country, he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government ;

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application ;

(d) that during the seven years immediately preceding the said period of twelve month, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than four years ;

(e) that he is good character ;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution ; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into, or continue in, service under a Government in India or under an international organisation of which India is a member or under a

society, company or body of persons established in India :

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit,—

(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;

(ii) allow periods of residence or service earlier than eight years before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.

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